UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
VALLEY DALE CROSSING, LTD.,	§	CASE NO. 10-36294
	§	(Chapter 11)
DEBTOR.	§	
CITY NATIONAL BANK,	§	
	§	
MOVANT,	§	
	§	
VS.	§	CONTESTED MATTER
	§	
VALLEY DALE CROSSING, LTD.,	§	
	§	
RESPONDENT.	§	

CITY NATIONAL BANK'S MOTION TO LIFT THE
AUTOMATIC STAY AGAINST VALLEY DALE CROSSING, LTD.

PURSUANT TO LOCAL BANKRUPTCY RULE 4001-1(b), A RESPONSE IS REQUIRED TO THIS MOTION, OR THE ALLEGATIONS IN THE MOTION MAY BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE STREET, ROOM 1254, DALLAS, TEXAS 75242 BEFORE THE CLOSE OF BUSINESS ON DECEMBER 30, 2010, WHICH IS AT LEAST 14 DAYS FROM THE DATE OF SERVICE HEREOF. A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY AND ANY TRUSTEE OR EXAMINER APPOINTED IN THE CASE. ANY RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE STAY IS TO BE CONTINUED.

COMES NOW, City National Bank, the successor in interest to Imperial Capital Bank, ("CNB") and hereby files its Motion to Lift the Automatic Stay Against Valley Dale Crossing, Ltd. (the "Motion") and would state as follows:

1. Valley Dale Crossing, Ltd., ("Valley Dale" or the "Debtor") filed for bankruptcy protection under chapter 11 of the United States Code on September 6, 2010. This is a single asset real estate case as defined in 11 U.S.C. § 101(51B).

2. On September 20, 2010, the Debtor filed its Schedules (docket no. 11) and Statement of Financial Affairs (docket no. 12).

3. Schedule D – Creditors Holding Secured Claims, completed by the Debtor, list City National Bank with a secured claim of $748,000.00 and an unsecured claim of $18,921.76.

4. On September 21, 2010, Valley Dale filed its Motion for an Order (I) Authorizing the Use of Cash Collateral, if any, pursuant to Sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4001(B) and (II) Granting Adequate Protection to the Pre-Petition Secured Lender (the "Cash Collateral Motion") (docket no. 14). CNB is the Debtor's pre-petition lender. Attached to the Cash Collateral Motion, as Exhibit A, is the 2010 Monthly Budgets – Valley Dale Crossing, Ltd.

5. On October 14, 2010, the Court entered an Order granting the Cash Collateral Motion (docket no. 23). The Order granting the Cash Collateral Motion granted, among other things, that the Debtor make monthly adequate protection payments to the CNB Lender in the amount of the Debtor's Excess Cash Flow, defined as any cash remaining after the collection of all income, and the payment of all expenses as authorized by the Court, leaving a balance of $5,000.00 in the Debtor's operating account for the purpose of maintaining a reasonable reserve. The Order granting the Cash Collateral Motion also granted, to the Lenders, replacement liens and security interest, in addition to the liens and security interest in the Debtor's property in which the Lenders held a perfected security interest or lien when the case commenced. The replacement liens would be subject to all validly perfected pre-petition liens including, but not

limited to, statutory liens for unpaid real estate taxes. It was furthered ordered that the Debtor would maintain insurance on the Lenders' collateral naming the CNB Lender as an additional insured. Upon information and belief, the Debtor is not complying with the cash collateral.

6. On November 22, 2005, Valley Dale Crossing, Ltd. entered into a Promissory Note Secured by Deed of Trust (the "Promissory Note") with Imperial Capital Bank for the principal amount of $795,000.00. City National Bank is the successor in interest to Imperial Capital Bank. A true and correct copy of the Promissory Note is attached hereto as Exhibit A. A Deed of Trust, Fixture Filing, Assignment of Rents, and Security Agreement (the "Deed of Trust") securing the Promissory Note was filed and recorded with the County Clerk of Dallas County, Texas on December 29, 2005, File No. 200503646674. Concurrently, a Rider to the Deed of Trust was also filed and recorded with the County Clerk of Dallas County, Texas. True and correct copies of the Deed of Trust and the Rider to the Deed of Trust are attached hereto as Exhibit B. Attached to the Deed of Trust is the detailed legal description of the property, but the property is commonly known as 11107 North Central Expressway, Dallas, Texas 75243 (the "Property"). A UCC Financing Statement ("UCC1") was filed on March 14, 2006, with the Texas Secretary of State, File no. 06-0008319320, listing Imperial Capital Bank as the Secured Party and Valley Dale Crossing, Ltd., a domestic limited partnership, as the Debtor. A true and correct copy of the UCC1 is attached hereby as Exhibit C.

7. As of December 1, 2010, CNB is owed $747,216.64 in principal and $118,700.75 in interest plus appraisal fees of $4,350.00, for a total of $870,267.39.

8. Upon information and belief, this bankruptcy case is a single asset real estate case. Debtor has admitted as much. *See*, Voluntary Petition, Docket No. 1. The Debtor admits in its Cash Collateral Motion and its Disclosure Statement filed on December 3, 2010 (docket no.

32), that the bankruptcy case was filed because of "...immediate and long term cash flow concerns." The Debtor missed its first payment to CNB in February 2010. The Debtor states that "[t]hese concerns arose due to the time period that the Property was not leased to a paying tenant." The Debtor's Property has been leased pursuant to a written lease agreement to Euro Connection, Inc. since May 28, 2008, and the lease is a five (5) year lease.

9. The Debtor has had to borrow money from Tax Ease Funding, LP ("Tax Ease") to pay its ad valorem taxes on the Property in the past. The Tax Ease note was executed on February 23, 2009, for the principal amount of $21,297.38. The Tax Ease loan is also secured by a deed of trust that has been filed of record in the Real Property Records of Dallas County, Texas. Upon information and belief, Tax Ease will asset that its lien is senior to the lien of CNB.

10. The 2010 ad valorem taxes in an amount of $12,079.92 will be due in January 2011. Although the 2010 ad valorem taxes accrued on January 1, 2010, the Debtor has failed to schedule those taxes. *See*, Schedule D, Docket No. 11.

11. Additionally, there appears to be an affidavit of lien filed against the real property by Nino Polidoros d/b/a Euro Connection in the amount of $9,948.00.

12. Pursuant to the Debtor's Schedule D – Creditors Holding Secured Claims, Valley Dale has secured debt in excess of $910,000.00. All liens are considered in determining whether the debtor has equity in the property. *In re Indian Palms Assoc., Ltd.*, 61 F.3d 197 (3rd Cir. 1995).

13. In Valley Dale's Disclosure Statement, the Debtor states that the Plan will be implemented by dedicating sufficient revenues to fund all obligations contained in the Plan. The Debtor evidently believes that its operations will enable it to generate sufficient revenues to fund the Plan; however, the Disclosure Statement reflects that this "hope and a prayer" is not realistic.

The Debtor also assumes that rental rates for the billboard easement will rise over the next five years. *See*, Debtor's Disclosure Statement, Section C – Implementation of the Plan (docket no. 32). The Debtor fails to explain where the "sufficient revenues" will come from and unless the Debtor's monthly rental rates for the billboard easement are increased substantially, the Debtor cannot expect to successfully reorganize. As Judge Ayers has stated:

> The answer is clear: *Little Creek* deals with cases that have little or no legitimate prospect for reorganization-either actual reorganization or chapter 11 liquidation. It encourages courts to grant relief from stay or to dismiss those cases. Judge Jones, in *Little Creek,* believed that such an approach is justified to prevent "abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefitting them in any way or to achieve reprehensible purposes." *In re Little Creek Development Co.*, 779 F.2d at 1072. A finding of bad intent is not necessary, however:
>
> Resort to the protection of the bankruptcy laws is not proper under these circumstances because there is no going concern to preserve, there are no employees to protect, and there is no hope of rehabilitation, except according to the debtor's "terminal euphoria." The Sixth Circuit in [*In re*] *Winshall Settlor's Trust,* 758 F.2d [1136] at 1137 [(6th Cir.1985)], aptly noted that
>
> [t]he purpose of Chapter 11 reorganization is to assist financially distressed business enterprises by providing them with breathing space in which to return to a viable state. *See In re Dolton Lodge Trust No. 35188,* 22 B.R. 918, 922 (Bankr.N.D.Ill.1982) "[I]f there is not a potentially viable business in place worthy of protection and rehabilitation, the Chapter 11 effort has lost is *raison d'etre...."* *In re Ironsides, Inc.*, 34 B.R. 337, 339 (Bankr.W.D.Ky.1983).
>
> Neither the bankruptcy courts nor the creditors should be subjected to the costs and delays of a bankruptcy proceeding under such conditions.
>
> *Id.* at 1073.
>
> The Court may, therefore, dismiss or grant relief from the stay upon a finding of intent or upon a finding of no prospect for reorganization. *See e.g., In re Fry Road Assoc's., Ltd.,* 66 B.R. at 606-07.

In re Oakgrove Village, Ltd., 90 B.R. 246, 249 (Bankr. W.D. Tex. 1988). Likewise, Valley Dale does not have a business to reorganize. The Debtor is a single interest entity.

14. CNB seeks relief from the stay for a) cause; b) lack of equity and not necessary for effective reorganization; and c) because the case is a single asset case and the Debtor cannot provide adequate protection pursuant to 11 U.S.C. § 362(d)(1), (2) and (3), which provide as follows:

> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--
>
> (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
> (2)
> (3) with respect to a stay of an act against property under subsection (a) of this section, if--
> (A) the debtor does not have an equity in such property; and
> (B) such property is not necessary to an effective reorganization;
>
> (4) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—
> (A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or
> (B) the debtor has commenced monthly payments that--
> (i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and
> (ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

11 U.S.C. § 362(d)(1), (2) and (3). The payments being made to CNB are not sufficient to pay the interest on the note at the non default contract rate. Additionally, next year the 2011 ad

valorem taxes will begin to accrue which will be administrative claims which the Debtor will be unable to pay.

15. The Debtor has scheduled the real property with a value of $745,078.24. CNB obtained an appraisal on May 25, 2010 which states the value to be $710,000.00. The Dallas County Appraisal District has valued the property at $454,450.00. The aggregate secured debt is over $910,000.00. Regardless of the valuation used, the Debtor has no equity in the property.

16. This is a single asset real estate case. The Debtor's budget will not support the adequate payments as required by § 362(d)(3). A successful plan of reorganization in this case is highly improbable due to the insufficient cash flow, and the Debtor lacks equity in the property.

WHEREFORE, PREMISES CONSIDERED, City National Bank requests that the Court grant its Motion to Lift the Automatic Stay Against Valley Dale Crossing, Ltd. and that it be allowed to pursue its state law remedies with regards to its collateral.

Respectfully submitted this 16th day of December, 2010.

HIRSCH & WESTHEIMER, P.C.

By: /s/ Michael J. Durrschmidt
Michael J. Durrschmidt
Texas Bar No. 06287650
700 Louisiana, Floor 25
Houston, Texas 77002
Telephone: 713-220-9165
Facsimile: 713-223-9319
E-mail: mdurrschmidt@hirschwest.com

Attorneys for City National Bank

CERTIFICATE OF CONFERENCE

I hereby certify that on the 15th day of December, 2010, I spoke with Debtor's counsel, Vicki L. Driver by telephone and Ms. Driver stated she could not get back with me until next week.

/s/ Michael J. Durrschmidt
Michael J. Durrschmidt

CERTIFICATE OF SERVICE

I hereby certify that on the 16th of December, 2010, a copy of the foregoing City National Bank's Motion to Lift the Automatic Stay Against Valley Dale Crossing, Ltd. was served via first class mail, postage prepaid, and/or the Clerk of the Court through the ECF system to the parties on the attached list.

/s/ Michael J. Durrschmidt
Michael J. Durrschmidt

Service List

US Trustee Attn: Erin Schmidt 1100 Commerce Street, Suite 976 Dallas, TX 75242	Vicki Driver Courtney Hull 7557 Rambler Road, Suite 110 Dallas, TX 75231	Valley Dale Crossing, Ltd. 4228 N. Central Expressway Suite 110 Dallas, TX 75206
Brytar, Inc. PO Box 720189 Dallas, TX 75372	McQueary Henry Bowles Troy 8144 Walnut Hill Lane Dallas, TX 75231	Suburban Building Service, Inc. PO Box 742884 Dallas, TX 75374
Scott R Meyer Cowles & Thompson 901 Main Street, Suite 3900 Dallas, TX 75202	City National Bank Attn: City Loan Center PO Box 60938 Los Angeles, CA 90060	Meritax, LLC 14800 Landmark Blvd. Suite 500 Dallas, TX 75254
TXU Energy PO Box 650638 Dallas, TX 75265	Tax Ease LP c/o Howard Spector Spector & Johnson 12770 Coit Road, Suite 1100 Dallas, TX 75251	Dallas County c/o Elizabeth Weller Linebarger Goggan Blair 2323 Bryan Street, Suite 1600 Dallas, TX 75201
RH Lawn Service d/b/a Carlos Lawn Service 2333 Stone Glen Lane Carrollton, TX 75007	Timothy Salaiden d/b/a MLS Service 2212 Trinity Springs Carrollton, TX 75007	